

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Emerson Jimel Edwards,

Plaintiff,

vs.

Warden Stephon; Ms. Jackson, Bryan P.
Stirling, and Ms. Labadore,

Defendants.

Civil Action No. 2:20-cv-1433-CMC

ORDER

This matter is before the court on Plaintiff's Complaint filed April 13, 2020. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), D.S.C., the matter was referred to United States Magistrate Judge Mary Gordon Baker for pre-trial proceedings.

On April 22, 2020, the Magistrate Judge entered an Order denying Plaintiff's motion to appoint counsel (ECF No. 11), and informing Plaintiff his Complaint was unclear and his allegations unintelligible, but construing claims under the ADA, the Rehabilitation Act, and regarding the execution of his sentence, as well as a COVID-19 claim. ECF No. 18. Plaintiff was granted leave to file an Amended Complaint within 21 days of that order, and was notified failure to do so could result in his case being dismissed. *Id.* at 5. Plaintiff filed an Amended Complaint on October 19, 2020. ECF No. 11. Thereafter, Plaintiff filed a motion to appoint counsel (ECF No. 23), a notice of change of address (ECF No. 21), and a motion to amend/correct the Complaint (ECF No. 24). The motion to appoint counsel was denied, but the motion to amend/correct Complaint was granted and he was given 21 days to file his Amended Complaint. ECF No. 27. Plaintiff requested an extension of 45 days to file his Amended Complaint, and was granted an extension of 21 days to file. ECF No. 31. He was warned no further extensions would be granted

absent extraordinary circumstances. ECF No. 31. Plaintiff then filed a motion to produce discovery, which was denied except he was sent a copy of his Complaint, the form orders, and text orders entered by the Magistrate Judge. ECF No. 38. The case was to be brought into proper form by May 26, 2021. ECF No. 39. Although the court received a change of address notice on June 15, 2021 (ECF No. 42), he has not filed an Amended Complaint.

On September 13, 2021, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending this matter be summarily dismissed without prejudice and without issuance and service of process because Plaintiff could not cure the defects in his Complaint. ECF No. 43. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has not filed objections and the time to do so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but

instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After a review of the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court finds no clear error. Accordingly, the court adopts the Report by reference in this Order. As Plaintiff may be able to refile his claim about his state conviction or sentence should it be overturned or called into question, this matter is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
October 25, 2021